

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2003

Dairyland Insurance Company
1800 North Point Drive
Stevens Point, Wisconsin 54481

NAIC Group Code 0169
NAIC Company Code 21164

EXAMINATION PERFORMED BY
INDEPENDENT CONTRACTORS
FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

April 19, 2005

The Honorable Doug Dean
Acting Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Acting Commissioner Dean:

In accordance with §§10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting and claims practices of the private passenger insurance business of Dairyland Insurance Company, hereinafter referred to as the "Company", has been conducted. The Company's records were examined at its home office located at 1800 North Point Drive, Stevens Point, Wisconsin 54481.

The examination covered the period from January 1, 2003 to December 31, 2003.

The following market conduct examiners respectfully submit the results of this examination:

Lucille E. Whittle, CIE

K. C. Lang, AIE

**MARKET CONDUCT
EXAMINATION REPORT
OF
DAIRYLAND INSURANCE COMPANY**

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COMPANY PROFILE

The Company is a stock property and casualty insurance company. It is the successor to Dairyland Mutual Insurance Company, which was incorporated on January 8, 1953 under the then-existing laws of Wisconsin. This Company was licensed in Colorado at the time it was acquired and Company personnel stated they were unable to provide date the original company started writing business in Colorado. On December 31, 1964, the Board of Directors adopted a resolution to reorganize the Company into a capital stock corporation. A plan was approved at a special meeting of policyholders and the Wisconsin Commissioner of Insurance issued an order approving the plan of reorganization of June 4, 1965. The new stock company was incorporated in Wisconsin on June 11, 1965 and commenced business on August 1, 1965. Through a series of stock purchases, The Sentry Corporation had acquired 99.4% ownership of the Company by the end of 1977. On March 2, 1978, Dairyland effected a 200-for-1 reverse split of its common stock. Since the new common stock did not allow for fractional shares, the minority interest was eliminated, leaving The Sentry Corporation as the sole shareholder.

In 1986, The Sentry Corporation was dissolved and Dairyland became a wholly owned subsidiary of Sentry Insurance a Mutual Company.

The Company's business consists of non-standard automobile and preferred/standard motorcycle. Its products are distributed primarily through an independent agency force. The Company is authorized to write business in forty-four (44) states.

The Company conducts its business from its parent company's home office in Stevens Point, Wisconsin. Staffing and all support services are provided by the parent company under an inter-company servicing agreement.

Based on figures supplied by the Colorado Division of Insurance's Industry Statistical Report, the Company reported direct written premium in Colorado for the calendar year 2003 of \$4,958,000, which represents a .17% market share for private passenger automobile insurance.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of this examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to private passenger automobile insurance. Examination information contained in this report should serve only those purposes. The conclusions and findings of this examination report are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners, the Colorado Division of Insurance and the Insurance Regulatory Examiners Society. In reviewing material for this report, the examiners relied primarily on records and materials maintained by the Company. The examination period covered one year of the Company's operations, from January 1, 2003 to December 31, 2003.

File sampling was based on a review of underwriting and claims files that were systematically selected by using ACLTM software and computer data files provided by the Company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and these comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree or disagree and justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings for each sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report as references to any practices, procedures, or files manifesting no errors were omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exceptions percentages less than five percent (5%) were also included.

This report contains information regarding exceptions to Colorado insurance laws. The examination included review of the following three (3) Company operations:

1. Company Operations/Management
2. Underwriting and Rating Practices
3. Claims Settlement Practices

All unacceptable or non-complying practices may not have been discovered during the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse or discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations not referencing specific insurance laws and/or regulations may be presented to encourage improvement in Company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Colorado Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's private passenger automobile underwriting and claims practices to determine compliance with Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
§10-3-1103	Unfair methods of competition and unfair or deceptive acts or practices prohibited
§10-3-1104	Unfair methods competition and unfair or deceptive acts or Practices
§10-4-602	Basis for cancellation
§10-4-603	Notice
§10-4-604	Nonrenewal
§10-4-605	Proof of notice
§10-4-609	Insurance protection against uninsured motorists – applicability
§10-4-610	Property damage protection against uninsured motorists
§10-4-611	Elimination of discounts – damage by uninsured motorist
§10-4-613	Glass repair and replacement
§10-4-614	Inflatable restraint systems - replacement - verification of claims
	<i>All of the §s below were added effective 7/1/03</i>
§10-4-618	Unfair or discriminatory trade practices – legislative declaration
§10-4-619	Coverage compulsory
§10-4-620	Required coverage
§10-4-621	Required coverage minimum
§10-4-622	Required provision for intrastate and interstate operation
§10-4-623	Conditions and exclusions
§10-4-625	Quarterly premium payments
§10-4-626	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6
§10-4-627	Discriminatory standards – premiums – surcharges – proof of financial responsibility requirements
§10-4-628	Refusal to write – changes in – cancellation – or nonrenewal of policies prohibited
§10-4-629	Cancellation – renewal – classification
§10-4-630	Exclusion of named driver
§10-4-632	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course – legislative declaration
§10-4-633	Certification of policy and notice forms
	<i>All of the Sections below were repealed effective 7/1/03</i>
§10-4-706	Required coverages - complying policies – PIP examination program.
§10-4-706.5	Operator's policy of insurance.
§10-4-707.5	Ridesharing arrangements - benefits payable - required coverage.
§10-4-708	Prompt payment of direct benefits.
§10-4-709	Coordination of benefits.
§10-4-710	Required coverages are minimum.
§10-4-711	Required provision for intrastate and interstate operation.

Law	Subject
§10-4-713	No tort recovery for direct benefits.
§10-4-714	Limitation on tort actions.
§10-4-715	No limitation on tort action against non-complying tort-feasors.
§10-4-717	Intercompany arbitration.
§10-4-718	Quarterly premium payments.
§10-4-719	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7.
§10-4-719.5	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
§10-4-719.7	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.
§10-4-720	Cancellation – renewal – reclassification
§10-4-721	Exclusion of named driver
§10-4-724	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course – legislative declaration
§10-4-725	Certification of policies and notice forms
Regulation 1-1-7	Market Conduct Record Retention
Regulation 5-1-2	Application and Binder Forms
Regulation 5-1-10	Rate and Rule Filing Submissions Property and Casualty Insurance
Regulation 5-1-14	Penalties For Failure To Promptly Address Property And Casualty First Party Claims
Regulation 5-1-16	Limitations of the Use of Credit Information on Insurance Scoring
Regulation 5-2-1	Relative Value Schedule For No-Fault – <i>Repealed 7/1/03</i>
Regulation 5-2-2	Concerning Renewal of Automobile Insurance Policies – Excluded Named Drivers
Regulation 5-2-3	Auto Accident Reparations Act (No-Fault) Rules and Regulations <i>Repealed 7/1/03</i>
Regulation 5-2-6	Automobile No-Fault Cost Containment Options – <i>Repealed 7/1/03</i>
Regulation 5-2-8	Timely Payment of Personal Protection Benefits – <i>Repealed 7/1/03</i>
Regulation 5-2-9	Personal Injury Protection Examination Program – <i>Repealed 7/1/03</i>
Regulation 5-2-11	Transition From No-Fault Auto To Tort System – <i>Effective 7/1/03</i>
Regulation 5-2-12	Concerning Automobile Insurance Consumer Protections
Regulation 6-1-1	Limiting Coverage

Company Operations/Management

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Contract Forms and Endorsements

The following private passenger automobile forms and endorsements, certified by the Company with the Colorado Division of Insurance for July 1, 2002 and July 1, 2003, were reviewed for compliance with Colorado insurance law:

Exhibit 2

Title	Form
Plain Talk Motorcycle Policy	5480.00-118-180
Plain Talk Automobile Policy	5480.00-209-889
Plain Talk Motorcycle Application	5480.CO-500-1002
Plain Talk Motorcycle Application (software version)	5480.CO-500PC-1002
Plain Talk Motorcycle Application (Web version)	5480.CO-500WEB-1002
Plain Talk Automobile Application	5480.CO-506-04/02 & 05/03
Plain Talk Automobile Application (software version)	5480.CO-506PC-07/01 & 05/03
Plain Talk Automobile Application (Web version)	5480.CO-506WEB & 05/03
Operators Policy Application	5480.CO-502-0101
Amendatory Endorsement – Motorcycle	5480.CO-549-0501 & 1002
Amendatory Endorsement – Automotive	5480.CO-210-1002
Rental Reimbursement	5480.CO-32-0797
Leased Private Passenger Car	5480.00-123-0678
Extended Non-Owned	5480.00-124-0190
Broad Form Liability	5480.00-134-0198
Automobile Towing & Road Service	5480.00-212-1289
Motorcycle Excursion Diversion	5480.00-213-0100
Vintage Motorcycle Endorsement	5480.00-215-0194
Lienholder Deductible Endorsement	5480.00-555-0788
Lienholder Deductible Endorsement	5480.00-558-0192
Physical Damage Plus Endorsement – Motorcycle	5480.00-701-0198
Replacement Cost – Motorcycle	5480.00-702-0103
Operator's Policy Endorsement	5480.CO-010-1197
Property Damage Uninsured Motorist	5480.CO-020-0789
Mexico Collision Endorsement	5480.CO-021-0192
Limited Reduced Personal Injury Protection	5480.CO-022-1101 & 0301
Colorado PIP Selection And Acknowledge Form	5480.CO-023-1002 & 0103
Named Driver Exclusion Endorsement	5480.CO-122-1295
Loss Payable Clause	5480.CO-250-1000
Personal Injury Protection Coverage	5480.CO-524-0100 & 1101
Private Passenger Automobile Disclosure	5480.CO-917-0199
Policyholder Complaint Automobile/Motorcycle	5480.CO-906-0197
Notice of Premium Increase	5480.CO-6-0998
Notice of Cancellation	5480.CO-556-0998
Notice of Nonrenewal	5480.CO-557-0998
Medical Report For Automobile Insurance	5480.00-159-0198
Special Equipment Definition	5480.00-157-201
Colorado Personal Injury Protection Renewal Notification	5480.CO-920-0103
Loss Payable Endorsement	5480.00-259

New Business /Cancellations/Nonrenewals/Surcharges/Rejections/Renewals

For the period under examination, the examiners systematically selected the following underwriting samples to determine compliance with underwriting practices:

Review Lists	Population	Sample Size	Percentage to Population
Automobile In-force Business	4402	50	1%
Automobile Cancelled for Cause After First 59 Days	1	1	100%
Automobile Cancelled for Nonpayment	1810	50	3%
Automobile Nonrenewals	66	50	76%
Surcharges	26	26	100%

Review Lists	Population	Sample Size	Percentage to Population
Motorcycle In-force Business	11,201	100	9%
Motorcycle Cancelled for Cause After First 59 Days	110	50	45%
Motorcycle Cancelled for Nonpayment	1907	50	3%
Motorcycle Nonrenewals	381	50	13%

Rating

The examiners reviewed the rate filings, rule filings, statistical justifications, and methodology submitted to the Colorado Division of Insurance for the period under examination. This information was then compared against a sample of in-force policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, classification plans, discounts, rating plans and final premium calculations.

Claims

For the period under examination, the examiners systematically selected the following samples to determine compliance of claims handling practices and claims manual rules:

Review Lists	Population	Sample Size	Percentage to Population
Automobile Closed Claims	209	50	24%
Automobile Claims Closed Without Pay	14	14	100%
PIP Paid Claims	248	50	20%

Review Lists	Population	Sample Size	Percentage to Population
Motorcycle Closed Claims	145	50	34%
Motorcycle Claims Closed Without Pay	4	4	100%

EXAMINATION REPORT SUMMARY

The examination resulted in a total of nine (9) issues arising from the Company's apparent failure to comply with the Colorado insurance law that governs all property and casualty insurers operating in the State of Colorado. These issues involved the following Company operations:

Company Operations/Management

No compliance issues were found in the area of company operations/management.

Underwriting and Rating Practices

In the area of private passenger automobile underwriting and rating practices, six (6) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements that must be followed when writing private passenger automobile policies in Colorado. In regard to these six (6) underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance law.

The six (6) compliance issues addressed in this phase are as follows:

- Failure of the Company's filings, in some cases, to comply with Colorado insurance law.
- Failure of the Company's underwriting guidelines, in some cases, to comply with Colorado insurance law.
- Failure of the Company, in some cases, to certify forms and endorsements that comply with Colorado insurance law.
- Failure of the Company, in some cases, to use a reason for nonrenewal that complies with Colorado insurance law.
- Failure of the Company, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and to provide an opportunity for the insured to exclude that person(s) from coverage in compliance with Colorado insurance law.
- Failure of the Company, in some cases, to use correct rating elements when rating private passenger automobile policies written in the State of Colorado in compliance with Colorado insurance law.

Claims Settlement Practices

In the area of private passenger automobile claims settlement practices, three (3) compliance issues are addressed in this report. These issues arise from Colorado private passenger automobile statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claim checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and the delay of claim payments. In regard to these three (3) compliance issues, it is recommended that the Company review its private passenger automobile claims handling procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance law.

The three (3) compliance issues addressed in this phase are as follows:

- Failure of the Company, in some cases, to make PIP benefit payments within the time period required to comply with Colorado insurance law.
- Failure of the Company, in some cases, to notify providers and claimants in writing of the reason why a provider's claim was not been paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits in compliance with Colorado insurance law.

- Failure of the Company, in some cases, to make correct payments on PIP claims in compliance with Colorado insurance law.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Examinations are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT
PERTINENT FACTUAL FINDINGS
DAIRYLAND INSURANCE COMPANY

<p><u>UNDERWRITING AND RATING PRACTICES</u></p> <p><u>FINDINGS</u></p>
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Issue A: Failure of the Company's filings, in some cases, to comply with Colorado insurance law.

§10-3-1104, C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, states in part:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

§10-4-626, C.R.S. Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6, states in part:

(1) No insurer authorized to transact or transacting business in this state shall refuse to write or refuse to renew a policy of insurance affording the coverage required by operation of section 10-4-620 solely because of the age, race, gender, national origin, residence, marital status, or lawful occupation, including the military service, of anyone who is or seeks to become insured, or solely because another insurer has canceled a policy or refused to write or renew such policy. The commissioner shall administer and enforce the provisions of this subsection (1)...

Effective July 1, 2003. Previously numbered §10-4-719

§10-4-628, C.R.S. Refusal to write - changes in - cancellation - nonrenewal of policies prohibited, states in part:

(1) No insurer shall cancel; fail to renew; refuse to write; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, permissive user, or any resident of the household of the applicant or insured has:

(a) Had an accident or accidents that are not the fault of such named applicant, insured, household member, or permissive user...

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance;

Effective July 1, 2003. Previously numbered §10-4-719.7

§10-4-710, C.R.S., Required coverages are minimum, states in part:

(1) Nothing in this part 7 shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverages required under this part 7...

(2)(a) Every insurer shall offer the following enhanced benefits for inclusion in a complying policy, in addition to the basic coverage described in section 10-4-706, at the option of the named insured...

(II) Compensation of all expenses of the type described in section 10-4-706(1)(b) without dollar or time limitations and payment of benefits equivalent to eighty-five percent of loss of gross income per week...

This section was repealed on July 1, 2003

Amended Colorado Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, under the authority of §§10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 4. Definitions

...B. "Incident" means an event or occurrence that results in an accident or motor vehicle conviction. An accident resulting in a motor vehicle conviction shall be treated as a single incident or event...

Section 5. Rules

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

a. Colorado law prohibits discrimination *solely based on* [emphasis added] age, color, sex, national origin, residence, marital status, or lawful occupation, including the military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation nonrenewal, reclassification or reduction in coverage which would not have occurred but for the prohibited practice. It is also prohibited to refuse to write a policy of insurance affording the coverages required by section 10-4-620, C.R.S., solely because another insurer has canceled a policy or refused to write or renew such policy...

b. Unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, insurers shall not refuse to write a policy for new applicants, surcharge premiums of new applicants or place new applicants in higher priced programs or plans solely based on:

(1) The fact that the applicant had no prior insurance...

4. Basis for cancellation of an automobile insurance policy...

d. Whenever the insurer chooses to cancel a policy, the earned premium shall be determined on a pro-rata basis, *including cancellation for nonpayment of premium*. [Emphasis added.]

Original effective February 1, 2004. Previously numbered Regulation 5-2-3.

The Company's two (2) automobile filings, filed to be effective October 15, 2002 for new business and December 9, 2002 for renewals, and July 1, 2003 for both new business and renewals, contain the following requirements or statements:

The following statement was made under Minimum Premium:

"This premium will be considered fully earned unless canceled at the option of the company. Nonpayment of premium by the insured is not considered a cancellation at the option of the company."

Colorado Regulation 5-2-12(5)(B)(4)(d) requires that cancellations for nonpayment of premium have any premium return due computed on a pro rata basis in the same manner as other company cancellations. Also, in order for the Company to consider a premium to be “fully earned” before a coverage time period sufficient to exhaust the premium has occurred, the Company must justify this action in its rate filings.

The following statement was made under the Surcharge Point System instructions:

...“If an AT-FAULT ACCIDENT and a CONVICTION result from the same occurrence, charge for the ACCIDENT only. EXCEPTION: If an AT-FAULT ACCIDENT occurs in connection with an “Operating While Intoxicated” conviction, charge for BOTH the accident and conviction.”

Based on the definition of “Incident” in Colorado Regulation 5-2-12, when accidents and convictions occur together, they are considered one event or occurrence and only one event or occurrence charge can be applied, i.e., the accident or the conviction. Also, this practice would be considered discriminatory because only an insured with an “Operating While Intoxicated” conviction which resulted in an accident would be charge for both.

The following statement was made under the description of At-Fault Accidents...

“E. Accident in which judgement or reimbursement is obtained from other party, providing the Company makes no liability payment on behalf of the insured. One vehicle accidents shall be considered at-fault accidents.”

This statement needs to be clarified to show that one vehicle accidents paid under uninsured motorist coverage will not be charged for since this is not allowed by Colorado insurance law.

The following statement was made under the eligibility requirements for the 10% Transfer Discount:

“All operators must be licensed at least two years.” Also, “When an application includes proof of prior insurance from a parent’s policy, the insured must be 22 years of age or older.”

Requiring a Colorado operator to be licensed at least two (2) years eliminates any insured’s policy that includes coverage for sixteen (16) and seventeen (17) year olds. Also, you cannot exclude anyone previously covered by their parent’s policy based on age.

The following statement has been made under Added Personal Injury Protection Coverage (PIP) and Added Preferred Provider Organization Coverage (PPO) in the October 15, 2002 filing:

“Option 2* Work Loss at 100% of the first \$125 of loss of gross income per week and 85% of loss of gross income per week above that.”

While §10-4-710 allowed an insured to offer coverages more extensive than that stated in §10-4-710, the Company was also required to offer loss of gross income of 85% per week without dollar or time limitations (subject to your \$200,000 aggregate limit).

The Company’s two (2) motorcycle filings, filed to be effective February 10, 2002 for new business and March 10, 2002 for renewals, and February 17, 2003 for new business and March 17, 2003 for renewals, contain the following eligibility requirements:

The Preferred Program requires that a driver be twenty-five (25) years of age or older and the Elite Program requires that a driver be thirty (30) years of age or older.

Colorado insurance does not allow a company to put an insured in a higher rated program due to age.

The Preferred Program and the Elite Program both require proof of continuous insurance during the past twelve (12) months.

Unless actuarially justified, a company is not allowed to refuse to write an applicant or put an applicant in a higher rated program because they did not have prior insurance.

The Company's 10% Transfer Discount requirements in both filings state:

“(1) All Operators are loss-free* during the past 12 months...” “*Any payment made to or on behalf of the insured shall be considered a loss.”

These statements need to be clarified to show that not-at-fault accidents will not be used to disqualify an applicant from receiving this discount as Colorado insurance law does not allow a not-at-fault accident to be used against an insured in any manner.

The following statement has been made under Minimum Premium:

“This premium will be considered fully earned unless canceled at the option of the company. Nonpayment of premium by the insured is not considered a cancellation at the option of the company.”

Colorado Regulation 5-2-12(B)(4)(d) requires that cancellations for nonpayment of premium have any premium return due computed on a pro rata basis in the same manner as other company cancellations. Also, in order for the Company to consider a premium to be “fully earned” before a coverage time period sufficient to exhaust the premium has occurred, the Company must justify this action in its rate filings.

Recommendation #1:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of §§10-3-1104, 10-4-626, 10-4-628, and 10-4-710, C.R.S., and Colorado Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide proof that it has corrected all existing filings currently in use so that these filings will comply with Colorado insurance law. The Company should also be required to furnish a copy of procedures that will ensure that all future filings will comply with Colorado insurance law.

Issue B: Failure of the Company's underwriting guidelines, in some cases, to comply with Colorado insurance law.

§10-3-1104, C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, states in part:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

§10-4-626, C.R.S. Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6, states in part:

(1) No insurer authorized to transact or transacting business in this state shall refuse to write or refuse to renew a policy of insurance affording the coverage required by operation of section 10-4-620 solely because of the age, race, gender, national origin, residence, marital status, or lawful occupation, including the military service, of anyone who is or seeks to become insured, or solely because another insurer has canceled a policy or refused to write or renew such policy. The commissioner shall administer and enforce the provisions of this subsection (1)...

Effective July 1, 2003. Previously numbered §10-4-719.

§10-4-628, C.R.S. Refusal to write - changes in - cancellation - nonrenewal of policies prohibited, states in part:

(1) No insurer shall cancel; fail to renew; refuse to write; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, permissive user, or any resident of the household of the applicant or insured has:

(a) Had an accident or accidents that are not the fault of such named applicant, insured, household member, or permissive user...

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance;

Effective July 1, 2003. Previously numbered §10-4-719.7

Amended Colorado Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, under the authority of §§10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 4. Definitions

...B. "Incident" means an event or occurrence that results in an accident or motor vehicle conviction. An accident resulting in a motor vehicle conviction shall be treated as a single incident or event...

Section 5. Rules

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

a. Colorado law prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including the military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation nonrenewal, reclassification or reduction in coverage which would not have occurred but for the prohibited practice. It is also prohibited to refuse to write a policy of insurance affording the coverages required by section 10-4-620, C.R.S., solely because another insurer has canceled a policy or refused to write or renew such policy...

b. Unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, insurers shall not refuse to write a policy for new applicants, surcharge premiums of new applicants or place new applicants in higher priced programs or plans solely based on:

(1) The fact that the applicant had no prior insurance...

4. Basis for cancellation of an automobile insurance policy...

d. Whenever the insurer chooses to cancel a policy, the earned premium shall be determined on a pro-rata basis, including cancellation for nonpayment of premium.

Original effective February 1, 2004. Previously numbered Regulation 5-2-3.

The Dairyland Automobile Rule Guide, furnished to be effective October 15, 2002 for new business and December 9, 2002 for renewals and the Rule Guide that was effective July 1, 2003 for new business and renewals, contain the following items:

Under the Surcharge Point System, the following statement was made:

“EXCEPTION: If an AT-FAULT ACCIDENT occurs in connection with an “Operating Auto While Intoxicated” conviction, charge for BOTH the accident and conviction.”

Based on the definition of “Incident” in Colorado Regulation 5-2-12, when accidents and convictions occur together, they are considered one event or occurrence and only one event or occurrence charge can be applied, i.e., the accident or the conviction. Also, this practice would be considered discriminatory because only an insured with an “Operating While Intoxicated” conviction which resulted in an accident would be charge for both.

The following statement was made under the eligibility requirements for the 10% Transfer Discount: “All operators must be licensed at least two years.” Also, “When an application includes proof of prior insurance from a parent’s policy, the insured must be 22 years of age or older.”

Requiring a Colorado operator to be licensed at least two (2) years eliminates any insured’s policy that includes coverage for sixteen (16) and seventeen (17) year olds. Also, you cannot exclude anyone previously covered by their parent’s policy based on age.

The following statement was made under Cancellations Procedures:

“Cancellation made at the insured’s request will be cancelled short-rate subject to a \$50 minimum earned premium.”

In order for the Company to consider a premium to be “fully earned” before a coverage time period sufficient to exhaust the premium has occurred, the Company must justify this action in its rate filings.

The following statement was made under the description of At-Fault Accidents...

“5. Accident in which judgement or reimbursement is obtained from other party, providing the Company makes no liability payment. One vehicle accidents shall be considered at-fault;”

This statement needs to be clarified to show that one vehicle accidents paid under uninsured motorist coverage will not be charged for since this is not allowed by Colorado insurance law.

The following statement was made under the “100/300 Liability Limit Rules” in both Rule Guides:
“Named Insured must be age 21 or older”.

Colorado insurance law does not allow a Company to reduce any coverage for a person based on age.

The following statement was made under the “Physical Damage Rules” in both Rule Guides:
“A. Coverage not available for the following: 1. Physical damage on vehicles NOT physically inspected by the agent.”

If a company writes a policy for liability insurance on an automobile in Colorado, it is not permitted to refuse to write collision coverage for any reason.

The following statements have been made in both Rule Guides under “Risks that must be submitted for approval” and “Risks not written”:

“Risks developing more than 25 surcharge points. Submit application with no effective date, no money, and no applicant’s signature. Company will advise agent on acceptability and premium. Agent may then bind coverage and submit signed application according to the Policy Issuance and Binding Procedures in this rate guide.”
“Dairyland Insurance reserves the right to make final underwriting decisions on all applications. The following is a general list of risks not written, however, a combination of factors may cause some applications to be unacceptable even though not specified below.”

Colorado law requires that all underwriting rules be applied equally to all applicants in order to prevent discrimination. Accepting some risks with more than 25 surcharge points and not others, or rejecting applicants that meet stated underwriting rules for any other reason is not permitted.

The Dairyland Motorcycle Rate Guide, furnished to agents to be effective February 10, 2002 for new business and March 10, 2002 for renewals and the Guide that was effective February 17, 2003 for new business and March 17, 2003 for renewals, contain the following items:

The Preferred Program requires that a driver be twenty-five (25) years of age or older and the Elite Program requires that a driver be thirty (30) years of age or older.

Colorado insurance does not allow a company to put an insured in a higher rated program due to age.

The Preferred Program and the Elite Program both require proof of continuous insurance during the past twelve (12) months.

Unless actuarially justified, a company is not allowed to refuse to write an applicant or put an applicant in a higher rated program because they did not have prior insurance.

The Company’s 10% Transfer Discount requirements in both the 2002 and 2003 Guides state:

“2. Was loss-free during the past 12 months...”

This statement needs to be clarified to show that not-at-fault accidents will not be used to disqualify an applicant from receiving this discount as Colorado insurance law does not allow a not-at-fault accident to be used against an insured in any manner.

The following statement has been made under Minimum Premium:

“The minimum premium will be fully earned unless cancelled at the option of the company. However, the minimum premium rule will apply to cancellations for nonpayment of premium.”

Colorado Regulation 5-2-12(B)(4)(d) requires that cancellations for nonpayment of premium have any premium return due computed on a pro rata basis in the same manner as other company cancellations. Also, in order for the Company to consider a premium to be “fully earned” before a coverage time period sufficient to exhaust the premium has occurred, the Company must justify this action in its rate filings.

Under the Standard – 4 Seasons Plan in both the 2002 and 2003 Guides:

The Increased Liability Limits table on pages 36 and 39, respectively, states that the limits of 100/300/50 and 100/300/100 are only available to insureds who are at least 25 or married.

Colorado insurance law does not allow a Company to reduce any coverage for a person based on age or marital status.

Under the Vintage Program in both the 2002 and 2003 Guides, the following statement is made:

“Due to the special nature of the program, we reserve the right to decline coverage on any individual risk.”

As long as a risk meets all the underwriting criteria required of all other risks, Colorado insurance law would consider it discriminatory to decline the risk for any other reason.

Recommendation #2:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of §§10-3-1104, 10-4-626, 10-4-628, and 10-4-710, C.R.S., and Colorado Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide proof that it has corrected all existing underwriting guides currently in use so that these guides will comply with Colorado insurance law. The Company should also be required to furnish a copy of procedures that will ensure that all future underwriting guides will comply with Colorado insurance law.

Issue C: Failure of the Company, in some cases, to certify forms and endorsements that comply with Colorado insurance law.

§10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(u) Certifying pursuant to section 10-4-633 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

§10-4-628, C.R.S., Refusal to write - changes in - cancellation - nonrenewal of policies prohibited, states in part:

2.(a)(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance...

Effective July 1, 2003. Previously numbered section 10-4-719.7

§10-4-706, C. R. S., Required coverages – complying policies – PIP examination program – repeal, states in part:

(3)(a) Notwithstanding anything in subsection (1) of this section, an insurer may offer, as an alternative to the minimum coverages required under paragraphs (b) to (e) of subsection (1) of this section, to persons qualified pursuant to paragraph (c) of this subsection (3), a reduced personal injury protection policy which shall be deemed to provide minimum coverages required for compliance with this part 7. Acceptance of any policy offered pursuant to this subsection (3) shall be voluntary and shall be subject to all requirements of this subsection (3).

(b) For persons qualified pursuant to paragraph (c) of this subsection (3), the coverages and limitations provided in a reduced personal injury protection policy shall be as follows:

(I) Compensation without regard to fault, up to a limit of twenty-five thousand dollars per person for any one accident for payment of all reasonable and necessary expenses for medical, chiropractic, optometric, podiatric, hospital, nursing, x-ray, dental, surgical, ambulance, and prosthetic services, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing, performed within five years after the accident for bodily injury arising out of the use or operation of a motor vehicle;

(II) No compensation shall be offered for rehabilitative occupational training;

(III) Compensation on account of the death of a person for whom direct benefits are provided under this section, payable to the estate of the deceased, in the total amount of five thousand dollars...

(e)(I) Any insurer providing policies pursuant to this subsection (3) may offer to any person qualified for such policies pursuant to paragraph (c) of this subsection (3) a loss of gross income benefit; except that the insured may waive loss of gross income benefits...Such benefit shall be for a loss of gross income due to an injury arising out of the use or operation of a motor vehicle if such injury prevents the injured insured from earning income of up to and including five thousand dollars which shall be paid as...

(f) (I) The reduced personal injury protection policy shall apply only to the named insured, resident spouse, and resident child...

(II) Any person injured in an accident, other than those persons whose coverage is specifically limited in a reduced personal injury protection policy pursuant to subparagraph (I) of this paragraph (f) shall, if expenses incurred by such injured person exceed the limits of such reduced personal injury protection policy, receive coverage for such expenses of not less than the minimum coverages mandated by paragraphs (b), (c), (d), and (e) of subsection (1) of this section...

This section was repealed on July 1, 2003

§10-4-710, C.R.S., Required coverages are minimum, states in part:

(1) Nothing in this part 7 shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverages required under this part 7...

(2)(a) Every insurer shall offer the following enhanced benefits for inclusion in a complying policy, in addition to the basic coverage described in section 10-4-706, at the option of the named insured...

(I) Compensation of all expenses of the type described in section 10-4-706(1)(b) without dollar or time limitation; or

(II) Compensation of all expenses of the type described in section 10-4-706(1)(b) without dollar or time limitations and payment of benefits equivalent to eighty-five percent of loss of gross income per week from work the injured person would have performed had such injured person not been injured during the period commencing on the day after the date of the accident without dollar or time limitations.

(b) A complying policy may provide that all benefits set forth in section 10-4-706(1)(b) to (1)(e) and in this section are subject to an aggregate limit of two hundred thousand dollars payable on account of injury to or death of any one person as a result of any one accident arising out of the use or operation of a motor vehicle.

This section was repealed on July 1, 2003

Amended Colorado Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, under the authority of §§10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

b. Unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, insurers shall not refuse to write a policy for new applicants, surcharge premiums of new applicants or place new applicants in higher priced programs or plans solely based on:

(1) The fact that the applicant had no prior insurance...

The Company's Form 5480.CO-549 (05-01), AMENDATORY ENDORSEMENT - COLORADO (Motorcycle), states in part:

"Cancellation During The Policy Period

You may cancel this policy by mailing to us a written notice stating the future date you wish the cancellation to be effective. If there is any refund in premium we'll mail it to your agent as soon as possible after the date of cancellation. The earned premium will be based on our short rate table. This means that we'll keep premium for the days you were protected, plus a percentage charge to cover the expense of canceling during the policy period."

The following Company Forms and Endorsements do (did) not comply with Colorado insurance law:

The Company's Form 5480.CO-23 (10/02), Form 5480.CO-23 (1/03), Form 5480.CO-506PC and Form 5480.CO-506WEB (08/01), COLORADO PERSONAL INJURY PROTECTION (PIP) SELECTION AND ACKNOWLEDGEMENT FORM, states in part:

"Your PLAIN TALK Car policy includes Personal Injury Protection (commonly know as PIP or No-Fault coverage). PIP covers you and your family members for medical..."

This statement should have read: PIP covers the named insured, each family member, and any person operating your covered auto with the permission of the named insured or resident spouse.

"OPTION 2(d): LIMITED PERSONAL INJURY PROTECTION COVERAGE:

You may purchase the Limited PIP/PPO-PIP coverage option when the annual gross income for all sources for yourself and your resident spouse do not exceed the amount allowed by Colorado Statutes. This option will limit the benefits to \$25,000 per person for medical expense coverage, \$5,000 per person in work loss benefits, and result in a premium savings of 15%..."

This option should have also explained that the Limited Personal Injury Protection Coverage was only applicable to the named insured, resident spouse, and resident child.

The Company's Form 5480.CO-022 (11-01), LIMITED BASIC PERSONAL INJURY PROTECTION COVERAGE – COLORADO, states in part:

"REJECTION OF WORK LOSS

If indicated in the Declarations, Work Loss does not apply to the named insured and any resident spouse."

This statement should have read: ...the named insured, resident spouse, and resident child.

The Company's Form 5480.CO-920 (01/03), COLORADO PERSONAL INJURY PROTECTION (PIP), states in part:

"OPTION 2 (d): LIMITED PERSONAL INJURY PROTECTION COVERAGE

If your policy declaration page reflects this option, you have chosen to limit coverage benefits. This option limits the benefit to \$25,000 per person for medical expense coverage, \$5,000 per person in work loss benefits, and result in premium savings of 15%. This option is available when the annual gross income for all sources for yourself and your resident spouse do not exceed the amount allowed by Colorado Statutes.

Person Injury Benefits are limited to \$25,000 per person for any one accident for payment of all reasonable and necessary expenses for medical, optometric, podiatric, hospital, etc. services performed with five years after the accident. Rehabilitative occupational training and essential service expenses will not be covered. Work loss benefits will be limited to \$5,000 per person.”

This option should have also explained that the Limited Personal Injury Protection Coverage was only applicable to the named insured, resident spouse, and resident child.

The Company’s Form 5480.CO-524 (Ed. 11/01), PERSONAL INJURY PROTECTION COVERAGE – COLORADO, states in part:

“OPTION 5. ADDED PERSONAL INJURY PROTECTION BENEFITS

If indicated as applicable in the Declarations, the following added personal injury protection benefits apply, instead of the corresponding basic personal injury protection benefits, to the named insured and any family member...”

“If the Declarations indicates that added medical expenses applies, the 5 year time limitation does not apply to medical expenses paid to or for the named insured or any family member...”

“If the Declarations indicates that added work loss applies, the 52 weeks time limitation does not apply to work loss paid to or for the named insured or any family member...”

“If the Declarations indicates any added personal injury protection benefits as being applicable to the named insured or any family member, the maximum limit of liability shown in the Declarations for the total of all basic and added personal injury protection benefits is the most we will pay for the total of all...”

The first statement above should have read: ...the named insured, each family member, and any person operating your covered auto with the permission of the named insured or resident spouse...

The next three (3) statements above should have read: ...the named insured, each family member, or any person operating your covered auto with the permission of the named insured or resident spouse...

If the insured had chosen Added Personal Injury Protection Benefits, they would have been applicable to all insureds covered by the policy. There were no limitations to covered persons written into this statute.

The Company’s Form 5480.CO-917 (7/03), COLORADO PRIVATE PASSENGER AUTOMOBILE INSURANCE DISCLOSURE FORM, states in part:

“A. Medical Expense Coverage

...This insurance doesn’t cover that amount paid or payable under any health or accident insurance available...”

This statement is misleading as Medical Expense Coverage in this policy would be primary over any other insurance and any company holding a health or accident insurance policy on the insured would be entitled to be reimbursed up to the limit of your insured’s medical coverage.

The Company’s Form 5480.00-118 (1/80), PLAIN TALK Motorcycle Policy, states in part:

Medical Expenses Covered By This Insurance

“...This insurance doesn’t cover that amount paid or payable under any health or accident insurance available...”

This statement is misleading as Medical Expense Coverage in this policy would be primary over any other insurance and any company holding a health or accident insurance policy on the insured would be entitled to be reimbursed up to the limit of your insured's medical coverage.

The Company's Form 5480.CO-500 (2/02) and Form 5480.CO-500 (3/01), Colorado Motorcycle Insurance Application, state in part:

“NEW BUSINESS MINIMUM EARNED PREMIUM - \$45”

Further, Form 5480.CO-500WEB (09/01), Colorado Motorcycle Insurance Application, states in part:

“...This payment must at least meet a \$45 minimum premium requirement. This minimum premium will be fully earned unless cancelled at the option of the company for underwriting reasons.”

The statements in the three (3) forms noted above conflict with the Company's Motorcycle Policy because the policy makes no mention of retaining a fully earned premium of \$45. In addition, in order to for a premium to be considered “fully earned” in Colorado, the Company must statistically justify why the premium should be considered fully earned in its rate filings with the Colorado Division of Insurance.

The Company Form 5480.CO-500 (2/02), Colorado Motorcycle Insurance Application, also states in part:

“PRIOR INSURANCE (*Requirement for Elite and Preferred Programs)”

Colorado insurance law does not allow a Company to place an insured in a higher rated program because the insured has had no prior insurance unless the Company can provide actuarial justification in support of such an action.

Recommendation #3:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of §§10-3-1104, 10-4-628, 10-4-706 and 10-4-710, C.R.S., and Colorado Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide proof that it has corrected all existing forms currently in use so that these forms will comply with Colorado insurance law. The Company should also be required to furnish a copy of procedures that will ensure that all future forms will comply with Colorado insurance law.

Issue D: Failure of the Company, in some cases, to use a reason for nonrenewal that complies with Colorado insurance law.

§10-4-604, C. R.S., Nonrenewal, states:

- (1) No insurer shall refuse to renew a policy unless such insurer or its agent mails or delivers to the named insured, at the address shown in the policy, at least thirty days' advance notice of its intention not to renew. This section shall not apply:
 - (a) If the insurer has manifested its willingness to renew;
 - (b) In case of nonpayment of premium;
 - (c) If the insured fails to pay any advance premium required by the insurer for renewal.
- (2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.
- (3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.
- (4) In the event an insurer refuses to renew, the insured may, by written request, demand a written notification of the reason for nonrenewal. Such notification shall be given the insured within twenty days after receipt of such request.

Colorado Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, under the authority of §§10-4-601.5, 10-4-625, 10-4-628 and 10-1-109, C.R.S., states in part:

...5. Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following...

- b. The previous producer no longer represents the company.

The following charts illustrate the significance of error versus the populations and samples examined:

**PRIVATE PASSENGER AUTOMOBILE POLICY NONRENEWALS
FROM JANUARY 1, 2003 TO DECEMBER 31, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
66	50	33	66%

An examination of fifty (50) private passenger automobile policies nonrenewed by the Company, representing 76% of all Colorado private passenger automobile policies nonrenewed during the examination period, showed thirty (33) exceptions (or 66% of the sample) in which the Company had nonrenewed an insured because their agent no longer represented the Company.

**MOTORCYCLE POLICY NONRENEWALS
FROM JANUARY 1, 2003 TO DECEMBER 31, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
381	50	38	76%

An examination of fifty (50) motorcycle policies nonrenewed by the Company, representing 13% of all Colorado motorcycle policies nonrenewed during the examination period, showed thirty-eight (38) exceptions (or 76% of the sample) in which the Company had nonrenewed an insured because their agent no longer represented the Company.

Recommendation #4:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of §10-4-604, C.R.S., and Colorado Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide a copy of procedures that will ensure it will no longer nonrenew insureds for reasons that do not comply with Colorado insurance law.

Issue E: Failure of the Company, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and to provide an opportunity for the insured to exclude that person(s) from coverage in compliance with Colorado insurance law.

§10-4-630, C.R.S., Exclusion of named driver, states:

(1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

(2) With respect to any person excluded from coverage under this section, the policy may provide that the insurer shall not be liable for damages, losses, or claims arising out of this operation or use of the insured motor vehicle, whether or not such operation or use was with the express or implied permission of a person insured under the policy.

Effective July 1, 2003. This section was previously numbered §10-4-721.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE POLICY SURCHARGES
FROM JANUARY 1, 2003 TO DECEMBER 31, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
26	26	7	27%

An examination of twenty-six (26) private passenger automobile policies surcharged by the Company, representing 100% of all Colorado private passenger automobile policies surcharged during the examination period, showed seven (7) exceptions (or 27% of the sample) in which the Company had increased an insured's premium due to surcharges but had not notified the insured of the premium increase or of the right to exclude the person(s) responsible for the premium increase.

Recommendation #5:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of §10-4-630, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide a copy of procedures that will ensure it will always send a notice of premium increase and the right to exclude the person(s) responsible for the premium increase to insureds in compliance with Colorado insurance law.

Issue F: Failure of the Company, in some cases, to use correct rating elements when rating private passenger automobile policies written in the State of Colorado in compliance with Colorado insurance law.

§10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

§10-4-401, C.R.S., Purpose – applicability, states in part:

(1) The purpose of this part 4 is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions, and to improve the availability and reliability of insurance. For such purposes, the division of insurance of the department of regulatory agencies and the head of the division, the commissioner of insurance, shall be charged with the execution of this part 4.

§10-4-609, C.R.S., Insurance protection against uninsured motorists – applicability, states in part:

(1)(a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle licensed for highway use in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 42-7-103 (2), C.R.S., under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; except that the named insured may reject such coverage in writing.

§10-4-706, C.R.S., Required coverages – complying policies – PIP examination program, states in part:

(3)(a) Notwithstanding anything in subsection (1) of this section, an insurer may offer, as an alternative to the minimum coverages required under paragraphs (b) to (e) of subsection (1) of this section, to persons qualified pursuant to paragraph (c) of this subsection (3), a reduced personal injury protection policy which shall be deemed to provide minimum coverages required for compliance with this part 7. Acceptance of any policy offered pursuant to this subsection (3) shall be voluntary and shall be subject to all requirements of this subsection (3).

(b) For persons qualified pursuant to paragraph (c) of this subsection (3), the coverages and limitations provided in a reduced personal injury protection policy shall be as follows:

(I) Compensation without regard to fault, up to a limit of twenty-five thousand dollars per person for any one accident for payment of all reasonable and necessary expenses for medical, chiropractic, optometric, podiatric, hospital, nursing, x-ray, dental, surgical, ambulance, and prosthetic services, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing, performed with five years after the accident for bodily injury arising out of the use or operation of a motor vehicle;

(II) No compensation shall be offered for rehabilitative occupational training;

(III) Compensation on account of the death of a person for whom direct benefits are provided under this section, payable to the estate of the deceased, in the total amount of five thousand dollars...

(e)(I) Any insurer providing policies pursuant to this subsection (3) may offer to any person qualified for such policies pursuant to paragraph (c) of this subsection (3) a loss of gross income benefit; except that the insured may waive loss of gross income benefits...Such benefit shall be for a loss of gross income due to an injury arising out of the use or operation of a motor vehicle if such injury prevents the injured insured from earning income of up to and including five thousand dollars which shall be paid as...

(f) (I) The reduced personal injury protection policy shall apply only to the named insured, resident spouse, and resident child...

(II) Any person injured in an accident, other than those persons whose coverage is specifically limited in a reduced personal injury protection policy pursuant to subparagraph (I) of this paragraph (f) shall, if expenses incurred by such injured person exceed the limits of such reduced personal injury protection policy, receive coverage for such expenses of not less than the minimum coverages mandated by paragraphs (b), (c), (d), and (e) of subsection (1) of this section...

This section was repealed on July 1, 2003

Amended Colorado Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, under the authority of §§10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 4. Definitions

...B. "Incident" means an event or occurrence that results in an accident or motor vehicle conviction. An accident resulting in a motor vehicle conviction shall be treated as a single incident or event...

The following chart illustrates the significance of error versus the population and sample examined:

PRIVATE PASSENGER AUTOMOBILE IN-FORCE POLICIES WRITTEN FROM JANUARY 1, 2003 TO DECEMBER 31, 2003

Population	Sample Size	Number of Exceptions	Percentage to Sample
4,402	50	9	18%

An examination of fifty (50) private passenger automobile in-force policies written by the Company, representing 1% of all Colorado private passenger automobile policies written during the examination period, showed nine (9) exceptions (or 18% of the sample) in which the Company used incorrect rating elements when rating private passenger policies. Four (4) policies were rated with an incorrect number of surcharge points. Two (2) policies were rated using February 27, 2003 rates instead of July 1, 2003 rates which caused them to also be rated with PIP coverage. Two (2) policies were rated with different PIP coverages than those chosen by the insureds. One (1) policy was rated with uninsured motorist coverage when the insured had rejected that coverage in writing.

Recommendation #6:

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of §§10-3-1104, 10-4-401, 10-4-609, and 10-4-706, C.R.S., and Colorado Regulation 5-1-12. In the event the Company is unable to provide such documentation, it should be required to provide a copy of procedures that will ensure it will use correct rating elements when rating policies written in the State of Colorado.

CLAIMS SETTLEMENT PRACTICES
FINDINGS

Issue G: Failure of the Company, in some cases, to make PIP benefit payments within the time period required to comply with Colorado insurance law.

§10-4-708, C.R.S., Prompt payment of direct benefits, states in part:

(1) Payments of benefits under the coverages enumerated in section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

This section was repealed on July 1, 2003

Colorado Regulation 5-2-8, Timely Payment of Personal Injury Protection Benefits, under the authority of §10-1-109, C.R.S., states in part:

III.A. Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in 10-4-706 are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred;

B. In the usual case, for purposes of triggering the thirty-day time period in section 10-4-708(1), C.R.S., the following documents are sufficient to establish reasonable proof of the fact and amount of the expenses incurred:

1. A properly executed application for benefits from the PIP claimant;
2. A notice to an insurer which meets the requirements of section 10-4-708.5, C.R.S.; and
3. A billing statement for a procedure or treatment, which is subject to the obligations of section 10-4-708.6, C.R.S.

This regulation was repealed on July 1, 2003

The following chart illustrates the significance of error versus the population and sample examined:

**PERSONAL INJURY PROTECTION CLAIMS ON WHICH PAYMENTS WERE MADE
FROM JANUARY 1, 2003 TO DECEMBER 31, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
248	50	14	28%

An examination of fifty (50) personal injury protection claim files, representing 20% of all Colorado personal injury protection claims on which payments were made by the Company during the examination period, showed fourteen (14) exceptions (or 28% of the sample) where the Company failed to pay PIP claims within the time period required by Colorado insurance law.

Recommendation #7:

Within thirty (30) days, the Company should provide written documentation demonstrating why it should not be considered in violation of §10-4-708, C.R.S., and Colorado Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide a copy of procedures that will ensure timely payment of PIP benefits in compliance with Colorado insurance law.

Issue H: Failure of the Company, in some cases, to notify providers and claimants in writing of the reason why a provider's claim was not paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits in compliance with Colorado insurance law.

§10-4-708, C.R.S., Prompt payment of direct benefits, states in part:

Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claims, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that an insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

This section was repealed on July 1, 2003

Colorado Regulation 5-2-8, under the authority of §§10-1-109, 10-4-704, 10-4-708(1.3), and 10-3-1110(1) C.R.S states in part:

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in section 10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Section 10-4-708(1), C.R.S., allows for the accumulation of claims expense for periods not exceeding one month and provides that benefits are not overdue if paid within 15 days after the end of a defined period of accumulation. An insurer is permitted by this statute to pay a bill within 15 days after the end of a defined accumulation period only when there is a reasonable likelihood that multiple providers are involved and more than one bill is received during the accumulation period...

D. Notice requirements

If an insurer does not pay a claim for benefits under section 10-4-706, C.R.S. within 30 days of receipt of all of the documents described in paragraph B. of this rule, the insurer shall immediately notify the PIP claimant and provider of the reason(s) the claim has not been paid. If the claim has not been paid because an investigation is underway, the insurer shall document in the claim file the actions being taken to investigate the claim and the efforts being made to promptly conclude the investigation.

This regulation was repealed on July 1, 2003

The following chart illustrates the significance of error versus the population and sample examined:

**PERSONAL INJURY PROTECTION CLAIMS ON WHICH PAYMENTS WERE MADE
FROM JANUARY 1, 2003 TO DECEMBER 31, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
248	50	14	28%

An examination of fifty (50) personal injury protection claim files, representing 20% of all Colorado personal injury protection claims on which payments were made by the Company during the examination period, showed fourteen (14) exceptions (or 28% of the sample) where the Company failed to notify the claimant and provider of the reason(s) the claim had not been paid within the time period required by Colorado insurance law.

Recommendation #8:

Within thirty (30) days, the Company should provide written documentation demonstrating why it should not be considered in violation of §10-4-708, C.R.S., and Colorado Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide a copy of procedures that ensure it will notify the claimant and provider of the reason(s) the claim has not been paid within the time period required in compliance with Colorado insurance law.

Issue I: Failure of the Company, in some cases, to make correct payments on PIP claims in compliance with Colorado insurance law.

§10-4-706, C.R.S., Required coverages – complying policies – PIP examination program, states in part:

(3)(a) Notwithstanding anything in subsection (1) of this section, an insurer may offer, as an alternative to the minimum coverages required under paragraphs (b) to (e) of subsection (1) of this section, to persons qualified pursuant to paragraph (c) of this subsection (3), a reduced personal injury protection policy which shall be deemed to provide minimum coverages required for compliance with this part 7. Acceptance of any policy offered pursuant to this subsection (3) shall be voluntary and shall be subject to all requirements of this subsection (3).

(b) For persons qualified pursuant to paragraph (c) of this subsection (3), the coverages and limitations provided in a reduced personal injury protection policy shall be as follows:

(I) Compensation without regard to fault, up to a limit of twenty-five thousand dollars per person for any one accident for payment of all reasonable and necessary expenses for medical, chiropractic, optometric, podiatric, hospital, nursing, x-ray, dental, surgical, ambulance, and prosthetic services, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing, performed with five years after the accident for bodily injury arising out of the use or operation of a motor vehicle;

(II) No compensation shall be offered for rehabilitative occupational training;

(III) Compensation on account of the death of a person for whom direct benefits are provided under this section, payable to the estate of the deceased, in the total amount of five thousand dollars...

(e)(I) Any insurer providing policies pursuant to this subsection (3) may offer to any person qualified for such policies pursuant to paragraph (c) of this subsection (3) a loss of gross income benefit; except that the insured may waive loss of gross income benefits...Such benefit shall be for a loss of gross income due to an injury arising out of the use or operation of a motor vehicle if such injury prevents the injured insured from earning income of up to and including five thousand dollars which shall be paid as...

(f) (I) The reduced personal injury protection policy shall apply only to the named insured, resident spouse, and resident child...

(II) Any person injured in an accident, other than those persons whose coverage is specifically limited in a reduced personal injury protection policy pursuant to subparagraph (I) of this paragraph (f) shall, if expenses incurred by such injured person exceed the limits of such reduced personal injury protection policy, receive coverage for such expenses of not less than the minimum coverages mandated by paragraphs (b), (c), (d), and (e) of subsection (1) of this section...

This section was repealed on July 1, 2003

The following chart illustrates the significance of error versus the population and sample examined:

**PERSONAL INJURY PROTECTION CLAIMS ON WHICH PAYMENTS WERE MADE
FROM JANUARY 1, 2003 TO DECEMBER 31, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
248	50	3	6%

An examination of fifty (50) personal injury protection claim files, representing 20% of all Colorado personal injury protection claims on which payments were made by the Company during the examination period, showed three (3) exceptions (or 6% of the sample) and four (4) instances where the Company failed to make correct payments on PIP claims. Two (2) policies had a combined total of three (3) people who appeared to have been entitled to PIP loss wages but this was not pursued by the Company. The insureds had rejected loss wages; however, these three (3) people were entitled to payment because they were not the named insured, resident spouse or a resident child. On one (1) claim a provider had been paid twice for the same services.

Recommendation #9:

Within thirty (30) days, the Company should provide written documentation demonstrating why it should not be considered in violation of §10-4-706, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide a copy of procedures that ensure correct payments will be made on all PIP claims in compliance with Colorado insurance law.

SUMMARY OF RECOMMENDATIONS LOCATOR
EXAMINATION REPORT ON

DAIRYLAND INSURANCE COMPANY

	ISSUE	RECOMMENDATION	PAGE #
A	Failure of the Company's filings, in some cases, to comply with Colorado insurance law.	1	18
B	Failure of the Company's underwriting guidelines, in some cases, to comply with Colorado insurance law.	2	22
C	Failure of the Company, in some cases, to certify forms and endorsements that comply with Colorado insurance law.	3	27
D	Failure of the Company, in some cases, to use a reason for nonrenewal that complies with Colorado insurance law.	4	29
E	Failure of the Company, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and to provide an opportunity for the insured to exclude that person(s) from coverage in compliance with Colorado insurance law.	5	30
F	Failure of the Company, in some cases, to use correct rating elements when rating private passenger automobile policies written in the State of Colorado in compliance with Colorado insurance law.	6	33
G	Failure of the Company, in some cases, to make PIP benefit payments within the time period required to comply with Colorado insurance law.	7	36
H	Failure of the Company, in some cases, to notify providers and claimants in writing of the reason why a provider's claim was not paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits in compliance with Colorado insurance law.	8	38
I	Failure of the Company, in some cases, to make correct payments on PIP claims in compliance with Colorado insurance law.	9	40

<p>Independent Market Conduct Examiners LUCILLE E. WHITTLE, CIE & K. C. LANG, AIE participated in this examination and in the preparation of this report.</p>
